



August 21, 2012

Submitted Via Federal Rulemaking Portal: <http://www.regulations.gov>

CC:PA:LPD:PR (REG-131491-10)
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Final Regulations on Health Insurance Premium Tax Credit

To Whom It May Concern:

The U.S. Chamber of Commerce (the “Chamber”) submits these comments in response to the Final Regulations on the Health Insurance Premium Tax Credit (“Final Regulations”), published in the Federal Register on May 23, 2012, and issued by the Department of the Treasury (“Treasury”) and the Internal Revenue Service (the “IRS”).¹ The Final Regulations relate to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 (“PPACA”).² The Final Regulations provide guidance to individuals who enroll in qualified health plans through Exchanges and claim the premium tax credit, and to Exchanges that make qualified health plans available to individuals and employers.

The Final Regulations also authorize the Commissioner of the Internal Revenue Service to publish additional guidance to address the effect on affordability of wellness incentives that increase or decrease an employee’s share of the premium.

Specifically, Treasury and the IRS are requesting comments on: types of wellness incentives; how these programs affect the affordability of eligible employer-sponsored coverage for employees and related individuals, and how incentives are earned and applied. While we appreciate the opportunity to comment on these discrete issues, our comments will first focus on a very significant concern regarding the affordability test and the suggestion that the statutory language may be ignored in future regulations.

¹ Final Regulations on Health Insurance Premium Tax Credit, 77 Fed. Reg. 30,377-30,400 (May 23, 2012). (to be codified at 26 C.F.R. pts 1 and 602) [hereinafter referred to as “Final Regulations”].

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-23/pdf/2012-12421.pdf>

² Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029. (2010).

The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region, with substantial membership in all 50 states. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. Therefore, we are particularly cognizant of the problems of small businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – is represented. These comments have been developed with the input of member companies with an interest in improving the health care system.

OVERVIEW

The Chamber and our member companies want quality health care to be readily available at an affordable price. The Chamber continues to advocate for health care reform that builds on the current employer-sponsored system and uses market-based solutions to lower costs, improve quality, and protect American jobs and the employers who create them. Employer-sponsored insurance remains a crucial element of our health care system – providing the most stable, innovative, and affordable health care coverage to Americans. “Of the 218 million Americans under age 65 who had health coverage of any sort in 2010, 157 million (or more than 70 percent) were covered through an employer”³ even though PPACA's employer mandate does not go into effect until 2014. We strongly caution against further increasing the heavy burdens and requirements that the PPACA already imposes on employer-sponsored coverage and the promulgation of regulations that exceed the statutory language of the already burdensome provisions.

AFFORDABILITY MUST BE BASED ON SELF-ONLY COVERAGE

The Final Regulations suggest that future regulations may require family member coverage also to be affordable, even though PPACA does not require this. This will jeopardize the ability of employers to provide health coverage to their employees and is inconsistent with the statute and the previously issued proposed rule. As articulated in the Proposed Rule published last August, we agree that “the statutory language specifies that for both employees and others who are eligible to enroll in employer-sponsored coverage by reason of their relationship to an employee, the coverage is unaffordable if the required contribution for “self-only” coverage (as opposed to family coverage or other coverage applicable to multiple individuals) exceeds 9.5 percent of household income.”⁴ Congress clearly intended the affordability test to be based on self-only coverage. We are very concerned that the IRS and Treasury are thinking of ignoring PPACA's self-only affordability test, a concern triggered by the Final Regulations' suggestion that family coverage affordability rules may be issued in the future.

³ Employer-Sponsored Healthcare: What Happens Now? The 2012 Survey On Employer Health Benefit Plans and Preferences Conducted by the Oliver Wyman Health & Life Sciences Practice, by Mindy Kairey and John Rudoy http://www.oliverwyman.com/media/OW_EN_HLS_PUBL_2012_Employer_Sponsored_Healthcare_What_Happens_Now.pdf.

⁴ Health Insurance Premium Tax Credit: Notice of Proposed Rulemaking and notice of public hearing, 76 Fed. Reg. at 50,935 (August 17, 2011) (to be codified at 26 C.F.R. pt 1) [hereinafter referred to as “NPRM”].

Specifically, the Final Regulations state “[f]uture regulations concerning employer-sponsored coverage will provide final rules on determining affordability for related individuals.”⁵ This suggests that the Departments promulgating regulations to implement the PPACA will ignore the specific statutory language which dictates that the affordability test is tied to self-only coverage. Changing the affordability test will drastically harm the ability of employers to offer coverage to their employees, further erode the employer-sponsored system, and increase the likelihood that employers will stop offering coverage entirely.

FULL CONSIDERATION OF EMPLOYER CONTRIBUTIONS TO HRAs AND HSAs

The Chamber urges Treasury and the IRS to confirm that all employer contributions to a Health Reimbursement Arrangement (“HRA”) which may be used to pay for premiums are counted for purposes of determining the affordability of an eligible employer-sponsored plan. It is a common practice for employers to help their employees purchase health insurance by contributing amounts to an HRA. This practice was encouraged by Treasury and the IRS with the issuance of Notice 2002-45 and subsequent guidance.⁶ Failing to include employer contributions to an HRA for purposes of the affordability test will negatively impact an employer’s ability to use HRAs as a funding mechanism for the purchase of health insurance. In many cases, an employer makes contributions to an HRA so its employees may use these amounts to pay for premiums. However, employees often use these contributions to pay for other medical expenses in addition to premiums. The employer should not be penalized for its employee’s decision to use these contributions for both premiums *and* other medical expenses. Treasury and the IRS should not force the employer to parse through what amounts were paid for premiums and what amounts were paid for other medical expenses when determining the affordability of the plan. Rather, the employer should be able to count *all* of the contributions to the HRA.

In addition, the Chamber urges Treasury and the IRS to include employer contributions to a health savings account (“HSA”) when determining an employer plan’s affordability. While amounts distributed from an HSA generally cannot be used to pay for health insurance premiums, encouraging employers to contribute amounts to help employees pay for medical expenses is sound policy, a policy that benefits individuals and families, and a policy that has long-standing support of Congress. It is important to note that Treasury and the IRS have already indicated employer contributions to an HSA may be used for purposes of determining the “minimum value” test.

APPROPRIATELY VALUING WELLNESS PROGRAMS

Employers have embraced workplace wellness programs as a way to engage employees in improving their health, a win-win for both the employer and the employee. Our member companies value these programs as a way to reduce absenteeism and employee turnover, and to offer a benefit that is appealing to many current and prospective employees. In fact, comprehensive wellness programs may help reduce expenditures for employees’ health care.⁷

⁵ Final Regulations, 77 Fed. Reg. at 30380.

⁶ Notice 2002-45, 2002-28 I.R.B. 93, 2002 WL 1378617 (IRS NOT), 2002-2 C.B. 9, published July 15, 2002, <http://www.irs.gov/pub/irs-drop/n-02-45.pdf>.

⁷ Health Affairs Health Policy Brief, Workplace Wellness Programs, May 10, 2012, http://healthaffairs.org/healthpolicybriefs/brief_pdfs/healthpolicybrief_69.pdf.

Approximately 67 percent of companies with three or more employees that offered health benefits also offer at least one wellness program, with slightly more than half (52 percent) also offering wellness benefits to spouses or dependents of employees.⁸ Research indicates that wellness programs reduce health care costs. “A review of 36 peer-reviewed studies of wellness programs in large firms found that average employer medical costs fell \$3.27 for every dollar spent on wellness programs, and costs for days that employees were absent fell by an average of \$2.73. Similarly, a 2005 meta-analysis of 56 published studies of health promotion programs at organizations of all sizes resulted in an overall reduction of about 25 percent in sick leave, health plan costs, and workers compensation and disability costs.”⁹

The Chamber agrees with Treasury’s interpretation that any rule on wellness incentives must consider the extent to which employees can be certain they will qualify for the incentives at the time they otherwise would be evaluated for eligibility for advance premium tax credit payments. Any forthcoming guidance should emphasize that affordability should be based on the lowest possible premium available to the employee if he/she participates in a wellness program. For example, if an employer may lawfully vary premiums for employee health coverage so that an employee not participating in a wellness program would have to pay a premium contribution of \$5,000 for self-only coverage, while an employee who participates in the employer’s wellness program would only have to pay a premium contribution of \$3,800 for self-only coverage, the lower available premium amount available to employees who participate in the wellness program should be the premium amount used to determine affordability.

CONCLUSION

The U.S. Chamber of Commerce appreciates the opportunity to comment generally on the application of the “affordability test” to employer-sponsored coverage, as well as the specific impact of financial incentives provided by employers for participation in workplace wellness programs. We urge Treasury and the IRS to continue to work carefully, pragmatically, and cooperatively with the business community to minimize burdens placed on employers as employers work to comply with the law. We continue to be committed to the employer-sponsored system and hope that you will consider the effects that various implementation choices will have on employers and their ability to continue to offer the coverage that their employees value. We look forward to continuing to work together in the future.

Sincerely,



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⁸ The 2011 Kaiser Family Foundation and Health Research and Educational Trust, Employer Health Benefits 2011 Annual Survey. <http://ehbs.kff.org/pdf/2011/8225.pdf>

⁹ Health Affairs Health Policy Brief, Workplace Wellness Programs, May 10, 2012, page 2.